

Message Text

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ACTION EB-07

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DOT-00 INR-07 NSAE-00 PM-04 H-02 L-03 NSC-05 PA-01

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FM AMEMBASSY BRASILIA

TO SECSTATE WASHDC 4509

INFO AMCONSUL RIO DE JANEIRO

FAA REP WASHDC

AMCONSUL SAO PAULO

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TAGS: EAIR, BR

SUBJECT: CIVAIR: U.S. ORIGIN CHARTER FLIGHTS

FOLLOWING MESSAGE PREPARED BY CONGEN RIO WITH EMBASSY
CONCURRENCE

SUMMARY: BRAZILIAN CIVIL AUTHORITIES FIRST INDICATED THEY WOULD
GIVE THE QUESTION OF EXEMPTING NON-SKEDS FROM THE FUEL TAX THEIR
FULL CONSIDERATION. LATER THEY INDICATED IT WOULD REQUIRE THE
CONSENSUS OF AN INTERMINISTERIAL COUNCIL IN WHICH EMBRATUR, THE
FEDERAL GOVERNMENT TOURISM AGENCY, SHOULD TAKE THE LEAD. THESE
AUTHORITIES HAVE INFORMED CONGEN RIO THEY DO NOT CONSIDER FUEL
TAX EXEMPTION FOR NON-SKEDS JUSTIFIABLE. WE BELIEVE IT IS
UNLIKELY THAT CONTINUED USG PRESSURE WILL ACHIEVE FUEL
TAX RELIEF FOR THE NON-SKEDS. GOB REFUND OR FUEL TAXES
PAID BY NON-SKEDS IS EVEN LESS LIKELY. END SUMMARY.

1. THIS CABLE SUMMARIZES THE AVIATION FUEL
TAX SITUATION AND CLEARS UP WHAT MAY BE
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SOME CONFUSION IN THE DEPARTMENT STEMMING FROM EARLIER

REPORTS FROM CONGEN RIO INDICATING A MORE FAVORABLE ATTITUDE ON THE PART OF BRAZILIAN CIVAIR AUTHORITIES FOR GRANTING FUEL TAX RELIEF TO NON-SKEDS.

2. THE BRAZILIAN AVIATION FUEL TAX IS AUTHORIZED BY 1953 LEGISLATION THAT APPEARS TO DISCRIMINATE INTENTIONALLY BETWEEN SCHEDULED AND NON-SCHEDULED AIR CARRIERS (RELEVANT LAW AND TRANSLATION TO BE POUCHED TO DEPARTMENT). THIS LEGISLATION EXEMPTS ALL BRAZILIAN SCHEDULED CARRIERS FROM TAXES ON AVIATION FUEL. MOREOVER, IT USES RECIPROCITY TO DETERMINE THE EXEMPTION OF FOREIGN FLAG SCHEDULED CARRIERS, E.G. PAN AM AND BRANIFF'S EXEMPTION MUST BE REMOVED IF VARIG'S EXEMPTION IN THE U.S. IS REMOVED. THE LAW ALSO DOES NOT DIFFERENTIATE BETWEEN CHARTER AND SCHEDULED FLIGHTS. THUS, IT DOES NOT APPEAR LEGALLY POSSIBLE FOR THE BRAZILIANS TO DISCRIMINATE BETWEEN CHARTER AND NON-CHARTER OPERATIONS OF SCHEDULED AIRLINES. IN SHORT, SCHEDULED AIRLINES ARE EXEMPT FROM THE FUEL TAX, REGARDLESS OF THE TYPE OF OPERATION, AND NON-SKEDS ARE NOT EXEMPT. ACCORDING TO OUR SOURCES, CHANGING THE BASIS OF HIS EXEMPTION REQUIRES A NEW LAW BY BRAZIL'S CONGRESS.

3. IN LATE 1974, WHEN USG BEGAN TO REQUEST RELIEF FOR NON-SKED AIRLINES FROM THE FUEL TAX, BRAZILIAN CIVAIR AUTHORITIES AT FIRST PROMISED CONGEN OFFICERS TO GIVE THIS MATTER THEIR FULL CONSIDERATION. THEY LEFT THE IMPRESSION THAT RELIEF WOULD BE CONSIDERED FAVORABLY. HOWEVER, TIA'S DIFFICULTIES WITH THE CIVIL AVIATION DEPARMENT (D.A.C.) (RIO 0547 AND 1414 OF 1975) CONCERNING FLIGHT CLEARANCES IN FEBRUARY/MARCH 1975 MAY HAVE RETARDED FAVORABLE CONSIDERATION. BRAZILIAN CIVAIR AUTHORITIES BEGAN TO VIEW THE NON-1 (3\$ (SPECIFICALLY TIA) AS A THREAT TO SCHEDULED CARRIERS AND BECAME RELUCTANT TO GRANT THEM FURTHER CONCESSIONS. CONGEN OFFCIERS WERE HEN TOLD THADSRELEVANT LEGISLATION COULD ONLY BE CHANGED BY RECOMMENDATIONS FROM AN INERMINISTERIAL COUNCIL. THIS COUNCIL WOULD HAVE REPRESENTATIVES OF MINISTERIES OF INDUSTRY AND COMMERCE, OF FINANCE AND OF AERONAUTICS. ACCORDING TO CIVAIR AUTHORITIES, THE INITIAL MOVE TO FORM SUCH A COUNCIL WOULD HAVE TO COME FROM EMBRATUR, HE BRAZILIAN FEDERAL TOURISM AGENCY, THROUGH THE MINISTRY OF INDUSTRY AND COMMERCE.

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4. CONGEN AND LOCAL T.I.A. REP THEN SEPARATELY DELIVERED LETTERS TO EMBRATUR CONCERNING FUEL TAX PROBLEM. NO ACTION HAS BEEN TAKEN BY EMBRATUR DESPITE THE FACT THAT IN SEPTEMBER 1975, THE CONGEN BROUGHT THIS MATTER TO THE PERSONAL ATTENTION OF EMBRATUR PRESIDENT, SAID FARHAT.

5. HE FUEL TAX ISSUE WAS ALSO RAISED IN NOVEMBER 1975 AT THE

US/BRAZIL CIVIL AIR CONSULTATIONS AND WITH THE DAC DIRECTOR, BRIG. DEOCLECIO DE LIMA SIQUEIRA. IN DECEMBER, 1975, IT WAS RAISED WITH DEOCLECIO'S SUCCESSOR, BRIG. SILVIO GOMES PIRES. A PAPER OUTLINING THE U.S. POSITION ON THE FUEL TAX ISSUE PREPARED BY THE U.S. CIVAIR DELEGATION WAS PRESENTED TO BOTH DEOCLECIO AND PIRES IN ADDITION TO THE EMBASSY NOTE OF JANUARY 1976 TO THE FOREIGN OFFICE.

6. WE HAVE GOTTEN NO RESPONSE FROM THE DAC OR THE FOREIGN OFFICE AND ARE UNLIKELY TO GET A RESPONSE IN ABSENCE OF FURTHER PRESSURE. IT REMAINS TO BE SEEN IF SUCH PRESSURE WOULD ACHIEVE RELIEF FOR THE NON-SKEDS. BRAZILIAN AUTHORITIES HAVE OLD CONGEN OFFICERS THAT THE FUEL TAX EXEMPTION IS A CONCESSION GRANTED TO SCHEDULED AIRLINES IN RECOGNITION OF THEIR OBLIGATIONS TO OPERATE FLIGHTS REGARDLESS OF PASSENGER LOADS. NON-SKEDS, IN THEIR ESTIMATION, DO NOT HAVE THIS OBLIGATION AND, IN FACT, OPERATE FLIGHTS THAT ARE FULLY BOOKED. THEREFORE, THEY SEE NO JUSTIFICATION FOR NON-SKEDS TO BENEFIT FROM THE FUEL TAX EXEMPTION. \$6. IN ADDITION, WE MUST KEEP IN MIND THAT BRAZIL HAS NO INTERNATIONAL NON-SKED AIRLINES. BRAZILIAN CIVAIR AUTHORITIES HAVE TOLD CONGEN RIO THEY WOULD NOT FAVOR THE DEVELOPMENT OF NON-SKEDS IN BRAZIL. THE GOB IS AWARE THAT FULL RECIPROCITY CAN BE ESTABLISHED BY ALLOWING ONLY THE DESIGNATED SCHEDULED CARRIERS TO FLY BETWEEN THE U.S. AND BRAZIL. THEY ARE ALSO AWARE THAT IF USDOC WITHDRAWS ITS DECLARATION OF RECIPROCITY, VARIG WILL BEGIN PAYING FUEL TAXES IN THE U.S. BRAZILIANS WOULD THEN FORCE PAN AM AND BRANIFF TO PAY FUEL TAXES IN BRAZIL. THE GOB COULD STILL CHARGE NON-SKEDS A DIFFERENTIAL TAX AND MAINTAIN DISCRIMINATION AGAINST THEM.

7. ANOTHER RESULT OF U.S. PRESSURE COULD BE FOR THE DAC TO CUT BACK ON CHARTER FLIGHT CLEARANCES. THE QUESTION OF LIMITED OFFICIAL USE

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FUEL TAX EXEMPTION BECAME URGENT ONLY AFTER DAC HAD RELAXED PREVIOUS RESTRICTIVE POLICY ON CHARTER FLIGHT APPROVALS, CAUSING CHARTER CARRIERS FUEL TAX BILL TO RISE TO SIGNIFICANT AMOUNTS. THUS DAC VIEWS PRESSURE FOR FUEL TAX REMOVAL AS A DIRECT RESULT OF RELAXATION OF PREVIOUS POLICY. IN DAC VIEW, PRESSURE CAN BE ELIMINATED OR REDUCED SIMPLY BY BANNING OR CUTTING BACK SEVERELY NON-SKED CHARTER FLIGHTS. AS DAC VIEWS TIA AS MOST AGGRESSIVE NON-SKED IN MATTER, THEY COULD BE HIT HARDEST SHOULD DAC ADOPT THIS POLICY.

8. IT IS HIGHLY UNLIKELY THAT U.S. CHARTER CARRIERS WILL GET REFUNDS OF TAXES PAID SINCE THESE WERE, IN THE BRAZILIAN VIEW, LEGALLY COLLECTED. KNOWLEDGEABLE LOCAL SOURCES CANNOT RECALL ANY INSTANCE OF REFUNDS BEING GIVEN IN CASES OF THIS NATURE.

CRIMMINS

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